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| 09/848,573  | 05/03/2001  | Cary Lee Bates       | ROC920010064US1              | 6829                   |
| 46797 7590 05/17/2010<br>IBM CORPORATION, INTELLECTUAL PROPERTY LAW<br>DEPT 917, BLDG. 006-1<br>3605 HIGHWAY 52 NORTH<br>ROCHESTER, MN 55901-7829 |             |                      | EXAMINER<br>ELISCA, PIERRE E |                        |
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CARY LEE BATES, MAHDAD MAJD,  
and  
JOHN MATTHEW SANTOSUOSSO

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Appeal 2009-006707  
Application 09/848,573  
Technology Center 3600

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Decided: May 17, 2010

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*Before:* MURRIEL E. CRAWFORD, BIBHU R. MOHANTY, and  
STEPHEN C. SIU, *Administrative Patent Judges.*

CRAWFORD, *Administrative Patent Judge.*

DECISION ON APPEAL

## STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1-7, 10, 13-15, 17, and 18. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6 (2002).

The claimed invention is directed to systems and methods for communicating inventory information between vending machines within a network (Spec. [0001]). Claim 1, reproduced below, is further illustrative of the claimed subject matter.

1. A method of locating an item in a network of vending machines, comprising:
  - receiving, at a vending machine in the network of vending machines, a purchase order for the item, the vending machine being configured to dispense at least one type of item when stocked with the at least one item;
  - in response to receiving the purchase order, transmitting a request for the item via a network connection established through a network interface of the vending machine; and
  - receiving, at the vending machine, a response to the request indicative of whether the item is available in at least one other vending machine configured to dispense the item when stocked with the item, whereby a user can retrieve the item at the at least one other vending machine when the item is available at the at least one other vending machine.

The reference of record relied upon by the Examiner as evidence of anticipation is:

|        |              |               |
|--------|--------------|---------------|
| Newell | US 5,159,560 | Oct. 27, 1992 |
|--------|--------------|---------------|

Claims 1-7, 10, 13-15, 17, and 18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Newell.

## OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellants and the Examiner. As a result of this review, we have reached the conclusion that the applied prior art does not anticipate the claimed subject matter. Therefore the rejection on appeal is reversed. Our reasons follow.

The following comprise our finding of facts with respect to the scope and content of the prior art. Newell discloses a system which allows a number of vending machines, operating in diverse locations, to be used for dispensing and retrieving articles while allowing an article acquired from one vending machine to be returned to another in the system (col. 1, ll. 41-45; col. 5, ll. 1-5). If an article is rented in one vending machine and returned to another, it must be removed from the inventory record of the vending machine from which it was rented (col. 4, ll. 32-35).

The disagreement between the Appellants and the Examiner is the Examiner's assertion that "it is inherent to recognize that the system of Newell is also capable of checking availability of one other vending machine," and "since Newell allows an article to be returned to another in the system, [a vending machine in Newell is] therefore capable of checking the *availability of one other vending machine*" (Exam'r's Ans. 5-6, emphasis added). Through these alleged inherent disclosures, the Examiner asserts Newell anticipates "receiving, at the vending machine, a response to the request indicative of whether the *item is available* in at least one other vending machine configured to dispense the item when stocked with the item," as recited in independent claims 1 and 17 (Exam'r's Ans. 3-6, emphasis added). No one disputes that vending machines are capable of

communicating with each other concerning items. However, even assuming *arguendo* that Newell inherently discloses what the Examiner alleges it inherently discloses, we do not believe that the Examiner has shown that the *type* of communications between the interconnected vending machines of Newell includes messages concerning *item availability* as claimed. We do believe that Newell's alleged inherent disclosure of *vending machine availability* is not the same as *item availability*.

Moreover, Newell discloses a vending machine sending a message to another vending machine that an *item has been returned*. This does not correspond to a vending machine, with an out-of-stock item, seeing if another vending machine has that *item available* as claimed.

#### CONCLUSION AND ORDER

The rejection of claims 1-7, 10, 13-15, 17, and 18 is reversed.

REVERSED

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